

Message

---

**From:** Kupchan, Simma [Kupchan.Simma@epa.gov]  
**Sent:** 4/27/2020 9:18:07 PM  
**To:** Siegal, Tod [Siegal.Tod@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]  
**CC:** Marshall, Tom [marshall.tom@epa.gov]  
**Subject:** RE: DF\_Draft FR notice re assumption and ESA DF Review.docx

Hi Tod,

Apologies for the delay in thanking you for this very fast and helpful analysis.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

---

**From:** Siegal, Tod <Siegal.Tod@epa.gov>  
**Sent:** Thursday, April 23, 2020 7:32 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Cc:** Marshall, Tom <marshall.tom@epa.gov>  
**Subject:** FW: DF\_Draft FR notice re assumption and ESA DF Review.docx

Simma

**Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

Happy to discuss further.

Tod Siegal  
U.S. EPA, Office of General Counsel  
Cross-Cutting Issues Law Office  
202-564-5552

---

**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Thursday, April 23, 2020 5:26 PM  
**To:** Siegal, Tod <Siegal.Tod@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** FW: DF\_Draft FR notice re assumption and ESA DF Review.docx

Tod (and Alexis!),

Thanks as always for all of your help with our 404 work. I have a question for you, Tod, that I'm not sure we've discussed. OW is planning to issue the attached FR notice pretty soon stating:

## Ex. 5 Attorney Client (AC)

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

---

**From:** Wade, Alexis <[Wade.Alexis@epa.gov](mailto:Wade.Alexis@epa.gov)>  
**Sent:** Wednesday, April 22, 2020 9:10 AM  
**To:** Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Cc:** Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>  
**Subject:** FW: DF\_Draft FR notice re assumption and ESA DF Review.docx

Here are Dave's comments.

Alexis Wade  
Attorney-Adviser  
Water Law Office  
EPA Office of General Counsel  
(202) 564-3273

---

**From:** Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Sent:** Wednesday, April 22, 2020 9:09 AM  
**To:** Wade, Alexis <[Wade.Alexis@epa.gov](mailto:Wade.Alexis@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>  
**Subject:** FW: DF\_Draft FR notice re assumption and ESA DF Review.docx

FYI - I've not even opened this.

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Wednesday, April 22, 2020 9:06 AM  
**To:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Subject:** RE: DF\_Draft FR notice re assumption and ESA DF Review.docx

Here you go—thanks!

---

**From:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Sent:** Wednesday, April 22, 2020 9:04 AM  
**To:** Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Subject:** RE: DF\_Draft FR notice re assumption and ESA DF Review.docx

Thanks John. Can you forward the attachment?

Mindy Eisenberg  
Associate Director, Oceans, Wetlands & Communities Division  
Office of Wetlands, Oceans and Watersheds  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW, mailcode 4504T  
Washington, DC 20460  
(202) 566-1290  
[eisenberg.mindy@epa.gov](mailto:eisenberg.mindy@epa.gov)

---

**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Wednesday, April 22, 2020 8:34 AM  
**To:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Cc:** Frazer, Brian <Frazer.Brian@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Subject:** FW: DF\_Draft FR notice re assumption and ESA DF Review.docx

DELIBERATIVE

Folks—we can move forward as Dave notes below. Would you coordinate with OGC and the Region on Dave's several asks? I'll acknowledge we'll do that when I open with Dave at our 1015a.

Thanks!

John

---

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Wednesday, April 22, 2020 8:23 AM  
**To:** Goodin, John <Goodin.John@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Aguirre, Janita <Aguirre.Janita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary

<walker.mary@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

**Subject:** RE: DF\_Draft FR notice re assumption and ESA DF Review.docx

## Ex. 5 AC/DP

Regards,

Dave

---

**From:** Ross, David P

**Sent:** Wednesday, April 22, 2020 7:21 AM

**To:** Goodin, John <Goodin.John@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>

**Cc:** Aguirre, Janita <Aguirre.Janita@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

**Subject:** DF\_Draft FR notice re assumption and ESA DF Review.docx

Confidential; Deliberative; Attorney-Client Communication

John and David,

Nice job to the team on this. Please move forward to FR publication. I've attached a few edits, but please have Macara's shop to the FRN scrub as well. I assume the team has confirmed with FDEP that they are good with putting their white paper in the docket, but please confirm.

Also, thanks for the update email on 4/9. Two things in there. When the team receives the draft BA, please talk to me and Mary before we initiate the deep dive review. I have been spending time getting briefed by Interior/FWS on their process

**Ex. 5 AC/DP**

Of the issues raised in your email, I'd like to discuss

## Ex. 5 Deliberative Process (DP)

Thanks.

Dave